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In re Application of :
BRZUSTOWICZ, Linda M. et al. :
Application No.: 10/564,260 : DECISION ON
PCT Application No.: PCT/US01/13107 :
International Filing Date: 23 April 2001 : PETITION
Priority Date: 21 April 2000 :
Attorney Docket No.: 1594-RUT.00-0084PCTA: UNDER 37 CFR 1.137(b)
For: METHODS AND COMPOSITIONS :
FOR THE DIAGNOSIS OF :
SCHIZOPHRENIA :
:

This is a decision on applicants' "Petition For Revival of International Application For Patent Abandoned Unintentionally Under 37 CFR 1.137(b)" filed in the United States Patent and Trademark Office on 12 July 2006.

BACKGROUND

On 23 April 2001, applicants filed an international application number PCT/US01/13107, which claimed a priority date of 21 April 2000. The twenty month period for entering the national stage in the United States expired at midnight on 21 December 2001.

On 10 January 2006, applicants filed a transmittal letter for entry into the national stage in the United States, which was accompanied by, *inter alia*, a petition to revive, payment of the petition fee and payment of the basic national fee.

On 12 January 2006, applicants submitted a declaration in support of their petition to revive.

On 12 May 2006, the Office mailed Decision On Petition Under 37 CFR 1.137(b), dismissing applicants' petition without prejudice

On 12 July 2006, applicants submitted a renewed petition under 37 CFR 1.137(b).

On 14 September 2006, the Office mailed Notification of Abandonment (Form PCT/DO/EO/909) indicating the application was abandoned as stated in the 12 May 2006 decision.

DISCUSSION

A petition to revive an abandoned application under 37 CFR 1.137(b) must be filed without intentional delay from the time the application became abandoned and/or applicant first became aware of the abandoned status of the application. A petition under 37 CFR 1.137(b) must be accompanied by (1) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition was unintentional, (2) a proposed response, (3) the petition fee required by law (37 CFR 1.17(m)), and (4) a terminal disclaimer and fee (if the international application was filed prior to June 8, 1995).

Items (2), (3) and (4) were previously satisfied.

Applicants state the entire delay in filing the required reply from the due date for the required reply until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional. However, it is unclear from the supporting information, whether that is correct. By January 2005, applicants were aware of the abandonment of this application. However, the first petition to revive was not filed until 10 January 2006. Applicants indicate that they were under the belief that the application could not be revived. This appears to be intentional delay. See MPEP 711.03(c)(II)(D). Further, the original declaration of the inventors indicated that they were made aware of the abandonment of this application in January 2005. In her more recent declaration, Ms. Bassett claims that she only became aware of the abandonment of the application in November 2005, contradicting her earlier declaration.

The declaration of Vincent Smeraglia is inadequate. It is clear that counsel was directed to abandon this application and 16 others. Mr. Smeraglia claims this instruction was a clerical error, but applicants do not indicate that they have attempted to revive the other 16.

The intentions of Ms. Brzustowicz with regard to the abandonment of this application are not relevant as she was under an obligation to assign her invention to Rutgers. Rutgers owned the invention and abandoned it. Ms. Bassett claims that she was a co-owner of this invention with Rutgers and was not under an obligation to assign. If this is correct, it is unclear why she is not listed as an applicant for any state other than the United States. Further, if Ms. Bassett gave control of the prosecution of this application to Rutgers, Rutgers' decision to abandon the application is binding on Ms. Bassett. See MPEP 711.03(c)(II)(E)

CONCLUSION

The petition to revive the application abandoned under 37 CFR 1.137(b) is **DISMISSED** without prejudice.

The application remains abandoned.

If reconsideration on the merits of this petition is desired, a proper response must be filed within TWO (2) MONTHS from the mail date of this decision. Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.137(b)". No additional petition fee is required.

Any further correspondence with respect to this matter should be addressed to the Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.

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